



BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2010-0048]

RIN 0579-AD29

Citrus Canker, Citrus Greening, and Asian Citrus Psyllid; Interstate Movement of Regulated Nursery Stock

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with nonsubstantive changes, an interim rule that amended the regulations governing the interstate movement of regulated articles from areas quarantined for citrus canker, citrus greening, and/or Asian citrus psyllid (ACP) to allow the movement of regulated nursery stock under a certificate to any area within the United States. In order to be eligible to move regulated nursery stock, a nursery had to enter into a compliance agreement with the Animal and Plant Health Inspection Service that specified the conditions under which the nursery stock must be grown, maintained, and shipped. The interim rule also amended the regulations that allow the movement of regulated nursery stock from an area quarantined for ACP, but not for citrus greening, to amend the existing regulatory requirements for the issuance of limited permits for the interstate movement of the nursery stock. The interim rule was necessary on an immediate basis in order to provide nursery stock producers in areas quarantined for citrus canker, citrus greening, and/or ACP with the ability to ship regulated nursery stock to markets within the United States that would otherwise be unavailable to them

due to the prohibitions and restrictions contained in the regulations while continuing to provide adequate safeguards to prevent the spread of the three pests into currently unaffected areas of the United States.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, National Policy Manager, Pest Management, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 851-2286.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 412(a) of the Plant Protection Act (7 U.S.C. 7701 et seq., referred to below as the PPA), the Secretary of Agriculture may prohibit or restrict the movement in interstate commerce of any plant or plant product, if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of a plant pest within the United States. Under the PPA, the Secretary may also issue regulations requiring plants and plant products moved in interstate commerce to be subject to remedial measures determined necessary to prevent the spread of the pest, or requiring the plants or plant products to be accompanied by a permit issued by the Secretary prior to movement.

Citrus canker is a plant disease that is caused by a complex of Xanthomonas spp. bacteria and that affects plants and plant parts of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to

extensive economic losses in commercial citrus-producing areas. Citrus canker is known to be present in the United States in the State of Florida.

The regulations to prevent the interstate spread of citrus canker are contained in “Subpart-Citrus Canker” (7 CFR 301.75-1 through 301.75-17, referred to below as the citrus canker regulations). The citrus canker regulations designate the State of Florida as a quarantined area, and restrict the interstate movement of regulated articles from and through this area. Regulated articles are plants and plant parts of all species, clones, cultivars, strains, varieties, or hybrids of the genera Citrus and Fortunella, and all clones, cultivars, strains, varieties and hybrids of the species Clausena lansium and Poncirus trifoliata. Plants and plant parts include, among other articles, fruit, seed, and nursery stock. The provisions of the citrus canker regulations that pertain to the interstate movement of regulated nursery stock from areas quarantined for citrus canker are found in § 301.75-6.

Citrus greening, also known as Huanglongbing disease of citrus, is considered to be one of the most serious citrus diseases in the world. Citrus greening is a bacterial disease, caused by strains of the bacterial pathogen “Candidatus Liberibacter asiaticus,” that attacks the vascular system of host plants. The pathogen is phloem-limited, inhabiting the food-conducting tissue of the host plant, and causes yellow shoots, blotchy mottling and chlorosis, reduced foliage, and tip dieback of citrus plants. Citrus greening greatly reduces production, destroys the economic value of the fruit, and can kill trees. Once infected, there is no cure for a tree with citrus greening. In areas of the world where the disease is endemic, citrus trees decline and die within a few years and may never produce usable fruit. Citrus greening was first detected in the United States in Miami-Dade County, FL, in 2005, and is known to be present in the United States in Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, two

counties in South Carolina, an area composed of portions of two counties in California, and portions of one county in Texas.

The bacterial pathogen causing citrus greening can be transmitted by grafting, and under laboratory conditions, by parasitic plants. There also is some evidence that seed transmission may occur. The pathogen can also be transmitted by two insect vectors in the family Psyllidae: Diaphorina citri Kuwayama, the Asian citrus psyllid (ACP), and Trioza erytreae (del Guercio), the African citrus psyllid. ACP can also cause economic damage to citrus in groves and nurseries by direct feeding. Both adults and nymphs feed on young foliage, depleting the sap and causing galling or curling of leaves. High populations feeding on a citrus shoot can kill the growing tip. ACP is currently present in Alabama, American Samoa, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, the Northern Mariana Islands, Puerto Rico, Texas, the U.S. Virgin Islands, and portions of Arizona, California, and South Carolina. Regular surveys of domestic commercial citrus-producing areas indicate that the African citrus psyllid is not present in the United States.

The regulations to prevent the interstate spread of citrus greening and ACP are contained in “Subpart-Citrus Greening and Asian Citrus Psyllid” (7 CFR 301.76 through 301.76-11, referred to below as the citrus greening and ACP regulations). The citrus greening and ACP regulations quarantine the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, two counties in South Carolina, an area composed of portions of two counties in California, and portions of one county in Texas due to the presence of citrus greening, and quarantine Alabama, American Samoa, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, the Northern Mariana Islands, Puerto Rico, Texas, the U.S. Virgin Islands, and portions of Arizona, California, and South Carolina due to the presence of ACP. The regulations also place restrictions on the interstate movement of regulated articles from

quarantined areas. Regulated articles include all plants and plant parts, except fruit, of host species within the family Rutaceae.

Because of the severity of citrus canker and citrus greening, and because the movement of citrus nursery stock is a well-documented pathway for the spread of these two diseases, the citrus canker and citrus greening and ACP regulations had generally prohibited the interstate movement of regulated nursery stock from areas quarantined for these diseases, with certain, limited exceptions.

On April 27, 2011, we published an interim rule<sup>1</sup> in the Federal Register (76 FR 23449-23459, Docket No. APHIS-2010-0048) that amended the citrus canker and citrus greening regulations to allow for the movement of regulated nursery stock under a certificate to any area within the United States. In order to be eligible to move regulated nursery stock, in addition to the other requirements of the citrus canker and/or citrus greening and ACP regulations, a nursery must enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) that specified the conditions under which the nursery stock must be grown, maintained, and shipped. The minimum conditions that would be part of such a compliance agreement were contained in a protocol document that accompanied the interim rule. The interim rule also amended the regulations that allow the movement of regulated nursery stock from an area quarantined for ACP, but not for citrus greening, to amend the existing regulatory requirements for the issuance of limited permits for the interstate movement of the nursery stock.

We solicited comments concerning the interim rule for 60 days ending June 27, 2011. We received seven comments by that date, from nursery stock producers and a State department

---

<sup>1</sup> To view the interim rule, its supporting documents, and the comments that we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0048>.

of agriculture. All commenters supported the rule but suggested some changes to or clarifications regarding either its provisions or those of the protocol document. We discuss the comments that we received immediately below.

#### Comments on the Interim Rule

The State department of agriculture pointed out that, in the preamble for the interim rule, we stated that the rule preempted all State and local laws that were inconsistent with the rule. The State department of agriculture stated that it was its understanding that the rule would not preempt existing State regulations that prohibited the movement of citrus nursery stock into its State.

Section 436 of the PPA provides that, with very limited exemptions, regulations issued by USDA pursuant to the PPA to prevent the dissemination of plant pests within the United States preempt State and local laws and regulations. Thus, we are bound by our statutory authority to claim such preemption.

However, it is worth noting that the preemption claimed by the interim rule extends only to laws and regulations that the State has issued to address the dissemination of citrus canker, citrus greening, and ACP. State laws or regulations that restrict or prohibit the movement of citrus nursery stock into the State in order to address other pests and diseases of citrus were not preempted by the interim rule.

One commenter stated that, while he produced citrus nursery stock, his markets were not out-of-State, but rather airport kiosks and souvenir stores within his State. However, since the nursery stock was marketed at these locations to tourists and other out-of-State visitors, the commenter asked whether movement of nursery stock to the kiosks and souvenir stores constituted interstate movement. The commenter pointed out that State regulations regarding the

intrastate movement of nursery stock to such destinations varied considerably from the provisions of the interim rule.

Because this movement to kiosks and stores occurs entirely within a State, it is an intrastate movement. As such, it is not regulated by the interim rule.

Several commenters stated that, while they produced nursery stock, their primary markets were not for nursery stock itself, but for leaves and other plant parts from nursery stock. The commenters asked whether the rule could be expanded in scope to cover both nursery stock and articles derived from nursery stock.

In response to this request, we reexamined the provisions of the interim rule and accompanying protocol document and determined that the regulatory provisions that pertain to the production of nursery stock within a nursery would provide for the production of leaves and other plant parts that are free of citrus canker, citrus greening, and ACP. However, the requirements in the protocol document for safeguarding shipments of nursery stock, as well as the recordkeeping requirements, were specifically drafted for nursery stock. They were not intended for leaves and plant parts, which are often packaged in a different manner and moved in significantly different market channels than nursery stock, and cannot simply be extended to apply to these articles.

Moreover, our analysis of the environmental effects of the interim rule under the National Environmental Policy Act (42 U.S.C. 4321 et seq.) examined only the environmental impacts associated with the production and movement of nursery stock in accordance with the interim rule and protocol document. The conclusions reached by that analysis apply only to nursery stock, and further analysis would need to be conducted if we were to extend the scope of the regulations to articles, such as leaves, that are often sold for direct human consumption.

Accordingly, we do not consider it possible to extend the scope of the interim rule to cover leaves and other plants parts in this final rule, and we are making no change to the regulations in response to this comment.

We do, however, recognize that producers in areas quarantined for citrus canker, citrus greening, and/or ACP have suffered a significant loss of markets for citrus leaves as a result of those quarantines. To that end, APHIS has recently begun developing a systems approach protocol for citrus leaves that are intended for culinary purposes that would mitigate the risk that these leaves present of spreading citrus diseases or ACP.

#### Comments on the Protocol Document

As we mentioned earlier in this document, the interim rule was accompanied by a protocol document. This protocol document contained standards and requirements that are included in compliance agreements issued pursuant to the interim rule, and that a nursery must therefore meet in order to move citrus nursery stock interstate without restriction from an area quarantined for citrus canker, citrus greening, and/or ACP. We received several comments regarding the protocol document.

Section I of the protocol document contained general requirements. One of these stated that all budwood source material maintained at the nurseries had to meet the same facility standards as a State Certified Clean Stock Program.

One commenter stated that this provision effectively incorporated State Certified Clean Stock Program facility standards by reference. The commenter further pointed out that the facility standards contained in State Certified Clean Stock Program regulations in the commenter's State differ significantly from the facility standards contained in the protocol document, and are, in general, far more restrictive and costly than those contained in the protocol document.



We acknowledge that this provision was worded in a manner which could be construed as incorporating State Certified Clean Stock Program facility standards by reference. Our intent was to require nurseries to obtain budwood from a facility that meets State Certified Clean Stock Program standards; this ensures that the propagative material that enters the nursery and is used as a foundation block is free of citrus canker, citrus greening, and ACP. Nurseries are not required to maintain the budwood under these same facility standards, which we agree are often both significantly more restrictive and costly than those in the protocol document. We have amended the protocol document to clarify the intent of this provision.

Section II of the protocol document contained additional requirements for interstate movement of regulated nursery stock from areas quarantined for citrus canker. One of these requirements was that vehicles, equipment, and other articles used to handle or move citrus nursery stock be treated for citrus canker upon leaving the grove or premises.

One commenter suggested that this requirement be amended to require treatment upon entering and exiting the facility itself.

The requirement was intended to work in tandem with another requirement in Section II that required personnel to disinfect their hands and arms and spray clothing and footwear with a product approved by APHIS to be effective against citrus canker prior to entering the nursery or compartment within the nursery in which nursery stock is grown for interstate movement. We intended the treatment of vehicles, equipment, and articles for citrus canker to take place at the same time and in the same location as this disinfection of personnel and clothing.

We never intended such treatment to take place upon leaving a grove or premises; this was an inadvertent editorial error, and we have not required treatment upon leaving a grove or premises since the interim rule was issued. We have amended the protocol document to reflect our original intent to require treatment upon entering the nursery.

We do not consider it necessary to require treatment of vehicles, equipment, and articles upon exiting the nursery or compartment. If the other provisions of the protocol document are adhered to, there should be no bacterium within the nursery or compartment.

In that same section of the protocol document, we required that all nursery stock for interstate movement from the facility must be visually inspected at 15-day intervals for symptoms of citrus canker.

Several commenters stated that requiring inspections to be conducted at 30-day intervals would allow them to dovetail with State-required inspections, lessening the burden on State regulatory personnel. The same commenters stated that, given the other requirements of the protocol, lengthening the duration between inspections to 30 days would be unlikely to increase the risk that nursery stock infected with citrus canker would be moved interstate under the provisions of the protocol.

We agree and have amended the protocol document accordingly.

Section IV of the protocol document contained additional requirements for interstate movement of nursery stock from areas quarantined for citrus greening. One of these requirements was that all nursery stock moved interstate from the nursery be treated with an APHIS-approved foliar spray no more than 10 days prior to shipment.

One commenter construed this requirement as requiring the entire nursery to be treated with an APHIS-approved foliar spray no more than 10 days prior to the shipment of any nursery stock from the nursery. Given the frequency of shipments that the commenter anticipated following issuance of the interim rule, the commenter stated that the aggregate number of pesticide applications would likely greatly exceed the maximum number allowed yearly at one premises by the U.S. Environmental Protection Agency.

This provision applies only to that nursery stock that is destined for shipment, not all nursery stock at the nursery.

Section V of the protocol document provided conditions for the issuance of limited permits for the interstate movement of regulated nursery stock from areas that are quarantined for ACP, but not for citrus greening.

One commenter stated that the protocol document should be amended to specify that these limited permits must be attached to the nursery stock.

Such a provision already exists in § 301.76-10 of the citrus greening and ACP regulations. Therefore, we do not consider it necessary to amend the protocol document in that manner.

A revised version of the protocol document that incorporates the changes discussed above is available on the Internet at

[http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/citrus/index.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus/index.shtml) and on

Regulations.gov (see footnote 1 above), and may also be obtained by contacting the person listed earlier in this document beneath the heading FOR FURTHER INFORMATION CONTACT.

#### Miscellaneous

We are making two nonsubstantive changes to § 301.76-6 of the ACP and greening regulations in this final rule. Paragraph (c) of that section provides for the issuance of limited permits for the interstate movement of regulated nursery stock from areas quarantined only for ACP, subject to certain conditions. One of these conditions, found in paragraphs (c)(1) and (c)(2) of that section, prohibits the movement of such nursery stock to commercial citrus-producing areas of the United States that are not quarantined due to the presence of ACP or citrus greening.

The paragraphs had listed the Northern Mariana Islands as such an area. However, established populations of ACP have been detected in the Northern Mariana Islands, and we have, accordingly, quarantined the Northern Mariana Islands for ACP. Therefore, we are amending paragraphs (c)(1) and (c)(2) of § 301.76-6 to remove the Northern Mariana Islands from the list of commercial citrus-producing areas that are not quarantined due to the presence of ACP or citrus greening.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule regarding Executive Orders 12372 and 12988 and the Paperwork Reduction Act.

Executive Order 12866 and the Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

Citrus canker, citrus greening, and ACP are among some of the most damaging citrus pests and diseases that have plagued the U.S. citrus industry. If their spread were not restricted, they would threaten the long-term profitability and vitality of the industry. The movement of infected citrus nursery stock is a primary means by which these citrus pests and diseases are newly introduced into citrus-producing areas.

In recent years, State and Federal regulatory measures have been implemented to mitigate the spread of these citrus pests to commercial citrus-producing areas where they are not known to exist. Prior to our April 2011 interim rule, the citrus canker and citrus greening regulations generally prohibited the interstate movement of regulated nursery stock from areas quarantined for those diseases, with certain limited exceptions. Restrictions were also placed on the interstate movement of nursery stock from areas quarantined for ACP because it is a vector of the bacterial pathogen that causes citrus greening.

The interim rule provided citrus nurseries in quarantined areas with access to previously unavailable markets throughout the United States. The majority of the citrus nurseries in quarantined areas were small entities. They benefitted from the rule by acquiring access to nationwide markets, although compliance costs may have reduced their competitiveness in comparison to suppliers of citrus nursery stock from non-quarantined areas.

This rule finalizes that interim rule with several nonsubstantive changes. These changes have the effect of removing a prohibition on the movement of regulated articles from areas quarantined only for ACP to the Northern Mariana Islands, which we have also quarantined for ACP. Operationally, this prohibition was removed when we imposed a quarantine for ACP on the Northern Mariana Islands, and we are not aware of any movement of regulated articles from such quarantined areas to the Northern Mariana Islands since then.

Because the Northern Mariana Islands are geographically isolated from most of the United States, the producers most likely to benefit from market access to the Northern Mariana Islands are producers in Guam, the closest U.S. commercial citrus-producing area that is quarantined only for ACP.

## List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rule amending 7 CFR part 301 that was published at 76 FR 23449-23459 on April 27, 2011, is adopted as a final rule, with the following changes:

### PART 301--DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

#### § 301.76-6 [Amended]

2. In § 301.76-6, paragraph (c)(1) is amended by removing the words “Northern Mariana Islands and” and paragraph (c)(2) is amended by removing the words “Northern Mariana Islands or”.

Done in Washington, DC, this 18<sup>th</sup> day of October 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-25019 Filed 10/23/2013 at 8:45 am; Publication Date: 10/24/2013]